

ROBERT F. KIMPEL

IBLA 73-362

Decided October 25, 1973

Appeal from decision of Alaska State Office denying reinstatement of oil and gas lease, A-060406! C.

Affirmed.

Oil and Gas Leases: Termination

Pursuant to 30 U.S.C. § 188(b) (1970), where an oil or gas lessee fails to make his annual rental payment at the appropriate Bureau of Land Management office on or before the anniversary date, the lease is terminated by operation of law.

Oil and Gas Leases: Reinstatement! ! Withdrawals and Reservations:
Effect of

Where an oil and gas lease is terminated by operation of law and the lands involved have been withdrawn from mineral leasing, a petition for reinstatement of the lease must be rejected. 43 CFR 3108.2-1(c)(3).

APPEARANCES: Robert F. Kimpel, pro se.

OPINION BY MR. FISHMAN

Robert F. Kimpel has appealed from the April 5, 1973, decision of the Alaska State Office denying reinstatement of his oil and gas lease, A-060406! C, which terminated December 31, 1972.

In its decision, the Alaska State Office noted that the anniversary date of this lease was January 1, 1973. However, although appellant submitted evidence showing mailing of the required rental on December 18, 1972, the rental was never received, and a subsequent payment was not received until March 29, 1973. The State Office noted that 43 CFR 3108.2-1 provides for reinstatement in certain

circumstances, one of which is availability for leasing, i.e., that the oil and gas interests in the desired lands have not " * * been withdrawn or otherwise disposed of, or have otherwise become unavailable for oil and gas leasing * * *." The lands included in appellant's lease, A-060406! C, were withdrawn from disposal, including mineral leasing by Public Land Order 5179 of March 9, 1972, 37 F.R. 5579.

Appellant contends that the risk of untimely delivery of certified mail should not rest on him, but should rest on the Government, whose responsibility it is to deliver mail. He argues that because he has submitted proof of said certified and timely mailing, and because the Postal Service verifies that the original payment has been irretrievably lost, the Department of the Interior should make an exception in his case.

The Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181, 188(b) (1970), and the regulations issued thereunder, 43 CFR 3108.2-1(a), provide for automatic termination " * * by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease." Id. Thus, when appellant's rental payment was not received on or before January 2, 1973, his lease automatically terminated as of December 31, 1972.

However, sec. 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188 (1970) and 43 CFR 3108.2-1 provide for reinstatement of terminated oil and gas leases under certain conditions. Although appellant's arguments go to one of those grounds, the decision from which he appeals rests on another basis, which we find to be dispositive.

As we have already mentioned, appellant has failed to counter the reasons set out by the State Office in its decision. By Public Land Order 5179 of March 9, 1972, 37 F.R. 5579, the lands within this lease were withdrawn from leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181-287 (1970).

The regulations permit the granting of a petition for reinstatement only where there is availability of Federal oil and gas interests in the lands, i.e., they have not been withdrawn or disposed of, or

otherwise have become unavailable. 43 CFR 3108.2-1(c)(3) 1/ Public Land Order No. 5179 and that regulation clearly prevent the reinstatement of the oil and gas lease in issue. Therefore the petition for reinstatement was rejected properly.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Member

We concur:

Edward W. Stuebing
Member

Anne Poindexter Lewis
Member

1/ This regulation states:

(3) Under no conditions will a terminated lease be reinstated if (i) a valid oil and gas lease has been issued prior to the filing of a petition for reinstatement affecting any of the lands covered by that terminated lease, or (ii) the Federal oil and gas interests in the lands have been withdrawn or disposed of, or have otherwise become unavailable for oil and gas leasing; however, the authorized officer will not issue a new lease for lands covered by a lease which terminates automatically until 90 days from the date of termination. (Emphasis supplied.)

